

Letters of Findings Number: 04-20100615
Sales and Use Tax
For the Period 2007 - 2009

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ISSUE

I. Sales and Use Tax— Exempt Sales.

Authority: IC § 6-8.1-5-1(c); IC § 6-2.5-11-2; IC § 6-2.5-11-10; IC § 6-2.5-2-1(a); [45 IAC 2.2-8-12](#); Commissioner's Directive 27 (July 2005); Sales Tax Information Bulletin 4 (July 2007).

Taxpayer protests that it now has documentation to support its position that certain sales were exempt from sales tax.

STATEMENT OF FACTS

Taxpayer is a Certified Service Provider that provides sales tax services for a Model 1 Seller—the seller is hereinafter referred to as "Company D." The Indiana Department of Revenue ("Department") conducted an audit investigation regarding sales tax collection and remittance by Taxpayer involving Company D. The investigation found "some exemptions were provided, but substantial error was still present." A proposed assessment was made; Taxpayer in turn filed a protest. An administrative hearing was held, and this Letter of Findings results. More facts will be provided below as needed.

I. Sales and Use Tax—Exempt Sales.

DISCUSSION

At the outset, the Department notes that [45 IAC 2.2-8-12](#) states in pertinent part:

- (a) Exemption certificates may be issued [sic.] only by purchasers authorized to issue such certificates by the Department of Revenue. Retail merchants, manufacturers, wholesalers and others who must register with the Department of Revenue and who qualify to purchase exempt from tax under this Act [[IC 6-2.5](#)] may issue exemption certificates with respect to exempt transactions. All persons or entities not required to register with the Department as retail merchants, manufacturers, or wholesalers, and who are exempt under this Act [[IC 6-2.5](#)] with respect to all or a portion of their purchases are authorized to issue exemption certificates with respect to exempt transaction provided an exemption number has been assigned by the Department of Revenue, or provided that the Department of Revenue has specifically provided a form and manner for issuing exemption certificates without the need for assigning an exemption number.
 - (b) Retail merchants are required to collect the sales and use tax on each sale which constitutes a retail transaction unless the merchant can establish that the item purchased will be used by the purchaser for an exempt purpose.
 - (c) All retail sales of tangible personal property for delivery in the state of Indiana shall be presumed to be subject to sales or use tax until the contrary is established. The burden of proof is on the buyer and also on the seller unless the seller receives an exemption certificate.
 - (d) Unless the seller receives a properly completed exemption certificate the merchant must prove that sales tax was collected and remitted to the state or that the purchaser actually used the item for an exempt purpose. It is, therefore, very important to the seller to obtain an exemption certificate in order to avoid the necessity for such proof. The mere filing of a Registered Retail Merchant Certificate number is not sufficient to relieve the seller of the responsibility to collect the sales tax or prove exempt use by the buyer.
 - (e) No exemption certificates are required for sales in interstate commerce, however, proper records must be maintained to substantiate such sales.
 - (f) An exemption certificate issued by a purchaser shall not be valid unless it is executed in the prescribed and approved form and unless all information requested on such form is completed.
 - (g) An exemption certificate or other evidence supporting an exempt sale must be maintained by the seller for at least three (3) years after the due date of the tax return upon which such exempt transaction is reported.
 - (h) Exemption certificates may be reproduced provided no change is made in the wording or content.
- (Emphasis added).

Additionally, the Department notes that the burden of proving a proposed assessment wrong rests with the person against whom the proposed assessment is made, as provided by IC § 6-8.1-5-1(c).

As noted above, Taxpayer is a Certified Service Provider ("CSP"). As part of the Streamlined Sales and Use Tax Agreement, IC § 6-2.5-11-2 defines a CSP as "an agent certified jointly by the states that are signatories to the agreement to perform all of the seller's sales tax functions." See also Streamlined Sales and Use Tax Agreement, Art. II, Sec. 203 (November 13, 2002; amended December 13, 2010), available at <http://www.streamlinedsalestax.org> (defining a CSP as "[a]n agent certified under the Agreement to perform all

the seller's sales and use tax functions, other than the seller's obligation to remit tax on its own purchases."). Thus the CSP is responsible for collecting and remitting the taxes. And as IC § 6-2.5-11-10(a) states:

A certified service provider is the agent of a seller, with whom the certified service provider has contracted, for the collection and remittance of sales and use taxes. As the seller's agent, the certified service provider is liable for sales and use tax due each member state on all sales transactions it processes for the seller except as set out in this section. A seller that contracts with a certified service provider is not liable to the state for sales or use tax due on transactions processed by the certified service provider unless the seller misrepresented the type of items it sells or committed fraud. In the absence of probable cause to believe that the seller has committed fraud or made a material misrepresentation, the seller is not subject to audit on the transactions processed by the certified service provider. A seller is subject to audit for transactions not processed by the certified service provider. The member states acting jointly may perform a system check of the seller and review the seller's procedures to determine if the certified service provider's system is functioning properly and the extent to which the seller's transactions are being processed by the certified service provider. (Emphasis added).

Commissioner's Directive 27 (July 2005), 28 Ind. Reg. 3069, states:

When registering, the seller may select one of the following technology models (i.e., methods of remittance) to remit the Indiana sales and use taxes collected:

A. MODEL 1, wherein a seller selects a CSP as an agent to perform all the seller's sales and use tax functions, other than the seller's obligation to remit tax on its own purchases. A seller that has selected a CSP as its agent to perform all of the seller's sales and use tax functions, other than the seller's obligation to remit tax on its own purchases, is a MODEL 1 SELLER.

The Audit "Explanation of Adjustments" noted that an "examination of the sales collection and remittance was conducted." The Explanation of Adjustments further stated that "while examining the attribute sample significant exemption information was missing." Although "some exemptions were provided, [] substantial error was still present." In correspondence to the Department, Taxpayer states:

The [S]tate of Indiana pulled a sample set of [Taxpayer's] transactional data and determined a proposed liability for [Company D]. In response, [Taxpayer] filed an appeal with documentation to support the exemptions questioned by the State.

Turning to Taxpayer's argument, Taxpayer provided Registered Retail Merchants Certificates ("RRMC") for three businesses. However, as [45 IAC 2.2-8-12\(d\)](#) states, "The mere filing of a Registered Retail Merchant Certificate number is not sufficient to relieve the seller of the responsibility to collect the sales tax or prove exempt use by the buyer." Taxpayer has not provided "properly completed exemption certificate[s]," nor has Taxpayer established "that the purchaser actually used the item for an exempt purpose" under [45 IAC 2.2-8-12\(d\)](#). Taxpayer's argument in this regard is denied.

Taxpayer also provided a letter from a business that is, according to Taxpayer, now bankrupt. Among the information in the letter is that company's "State Tax [Number]...." The letter is not an exemption certificate, and it also does not meet the requirements of [45 IAC 2.2-8-12](#). Taxpayer's argument in this regard is denied.

Taxpayer also provided the Department with a copy of an invoice for a fire department; Taxpayer states, "Indiana local government units are exempt from Indiana sales tax[.]" IC § 6-2.5-5-16 states:

Transactions involving tangible personal property, public utility commodities, and public utility service are exempt from the state gross retail tax, if the person acquiring the property, commodities, or service:

(1) is the state of Indiana, an agency or instrumentality of the state, a political subdivision of the state, or an agency or instrumentality of a political subdivision of the state, including a county solid waste management district or a joint solid waste management district established under [IC 13-21](#) or [IC 13-9.5-2](#) (before its repeal); and

(2) predominantly uses the property, commodities, or service to perform its governmental functions.

And Indiana Sales Tax Information Bulletin 4 (July 2007), 20070801 Ind. Reg. 045070434NRA, states that, "The State of Indiana and its local governments are not subject to sales or use tax on any purchase to be used primarily to carry out a governmental function." Information Bulletin 4 further states, "Traditional governmental activities" include "fire protection...." The Department notes that Information Bulletin 4 also states: "To purchase property exempt from tax, local governments must register with the Department and issue an exemption certificate to the seller." (Emphasis added). Taxpayer has not provided the Department with an exemption certificate for the invoice at issue, thus Taxpayer's argument in this regard is denied.

Lastly, Taxpayer argues that there were transactions that "were erroneously pulled with the incorrect destination addresses." IC § 6-2.5-2-1(a) states, "An excise tax, known as the state gross retail tax, is imposed on retail transactions made in Indiana." Taxpayer provided two invoices showing that items were in fact shipped to states other than Indiana. Regarding these two invoices (one shipped to Texas, the other shipped to Connecticut), Taxpayer's argument is sustained subject to Audit verification that the invoices were part of the audit sample.

FINDING

Taxpayer's protest is denied with regards to all issues, with the exception of the following: Taxpayer's argument

regarding two invoices for items shipped to other states (Texas, Connecticut) is sustained subject to Audit verification that the invoices were part of the audit sample.

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